

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

16-MJ-147

SERGIO MUCINO,

Defendant.

**GOVERNMENT'S NOTICE OF MOTION FOR AN
ADJOURNMENT OF THE RULE 48(b) DISMISSAL ORDER**

PLEASE TAKE NOTICE that the United States moves the Court for an adjournment of the date for the Order pursuant to Fed. R. Crim. P. 48(b) dismissing the criminal complaint in this case from May 31, 2017 to July 31, 2017. This motion is based upon an accompanying Affidavit of Special Assistant United States Attorney Brian J. Counihan. Counsel for the defendant, Joel L. Daniels, Esq., consents to and joins in the relief sought herein.

DATED: Buffalo, New York, May 26, 2017.

JAMES P. KENNEDY, JR.
Acting United States Attorney
Western District of New York

BY: s/ BRIAN J. COUNIHAN
Special Assistant United States Attorney
United States Attorney's Office
Western District of New York
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

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16-MJ-147

SERGIO MUCINO,

Defendant.

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

BRIAN J. COUNIHAN, being duly sworn, deposes and states:

1. I am a Special Assistant United States Attorney for the Western District of New York and am presently assigned to prosecute the above-captioned case. This affidavit is made in support of the government's motion to extend the date for dismissal pursuant to Fed. R. Crim. P. 48(b) so that the parties can come to a pre-indictment resolution of this case.

2. On October 17, 2016, a criminal complaint was authorized by the Court charging the defendant with violating Title 8, United States Code, Section 1324(a)(1)(A)(iii) and 1324(a)(1)(A)(v)(I), [alien harboring].

3. On October 18, 2016, the parties appeared before this Court for an initial appearance. At the initial appearance, the Court set December 30, 2016 for a Rule 48(b) dismissal.

4. On November 30, 2016, upon the defendant's request, this Court adjourned the December 30, 2016 Rule 48(b) dismissal until March 31, 2017.

5. On March 31, 2017, upon both parties request, this Court adjourned the March 31, 2017 Rule 48(b) dismissal until May 31, 2017.

6. Since the initial appearance, counsel for the government and defendant have been working on a resolution of this matter that will involve a plea to an information pursuant to a negotiated plea agreement. As such, the parties are seeking an adjournment. The defendant is facing other potential criminal and civil charges and/or inquiries from multiple state and federal entities related to the substance of this case. The government is waiting for the United States Internal Revenue Service to complete their federal income tax analysis of the defendant's business operations. The disposition of this case affects other cases.

7. It is in the best interests of the defendant to resolve the case in such a way that provides a more favorable plea and sentence than what the defendant would face if convicted after indictment and trial. The time, resources, and expense of a grand jury presentation, a trial and a possible appeal would be saved if a pretrial resolution is reached, and therefore, the interests of justice outweigh the interest of the public in a speedy trial.

WHEREFORE, for all of the foregoing reasons, the parties respectfully request that the Court grant the government's motion to extend the Rule 48(b) dismissal date of the pending criminal complaint to July 31, 2017, and to exclude the period from May 31, 2017 through July 31, 2017 from the Speedy Trial Act, pursuant to Title 18, United States Code, Sections 3161(h)(7)(A) and 3161(h)(7)(B)(iv).

s/ BRIAN J. COUNIHAN
Special Assistant United States Attorney
United States Attorney's Office
Western District of New York
138 Delaware Avenue
Buffalo, New York 14202
(716) 843-5831
brian.counihan@usdoj.gov

Subscribed and sworn to before me
this 26th day of May, 2017.

s/ Jennifer L. Atkins
COMMISSIONER OF DEEDS
In and for the City of Buffalo, New York.
My Commission Expires Dec. 31, 2017.